

DUANE MORRIS LLP

Gregory P. Gulia
Vanessa C. Hew
R. Terry Parker
1540 Broadway
New York, NY 10036
(212) 692-1000

*Counsel for Defendants
MP3tunes, Inc. and Michael Robertson*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CAPITOL RECORDS, INC., CAROLINE
RECORDS, INC., EMI CHRISTIAN MUSIC
GROUP INC., PRIORITY RECORDS LLC, VIRGIN
RECORDS AMERICA, INC., BEECHWOOD
MUSIC CORP., COLGEMS-EMI MUSIC INC., EMI
APRIL MUSIC INC., EMI BLACKWOOD MUSIC,
EMI FULL KEEL MUSIC, EMI GOLDEN TORCH
MUSIC CORP., EMI LONGITUDE MUSIC, EMI
VIRGIN MUSIC, INC., EMI VIRGIN SONGS, INC.,
EMI AL GALLICO MUSIC CORP., EMI ALGEE
MUSIC CORP., EMI FEIST CATALOG, INC., EMI
GOLD HORIZON CORP., EMI GROVE PARK
MUSIC, INC., EMI HASTINGS CATALOG, INC.,
EMI MILLS MUSIC, INC., EMI MILLER
CATALOG, INC., EMI ROBBINS CATALOG,
INC., EMI U CATALOG, INC., EMI UNART
CATALOG, INC., JOBETE MUSIC CO., INC.,
SCREEN GEMS-EMI MUSIC, INC., STONE
AGATE MUSIC, and STONE DIAMOND MUSIC,

Plaintiffs,

v.

MP3TUNES, INC., and MICHAEL ROBERTSON,

Defendants.

CIVIL ACTION NO. 07 Civ. 9931(WHP)
ECF Case

**DECLARATION OF
MICHAEL ROBERTSON IN
SUPPORT OF HIS MOTION FOR
SUMMARY JUDGMENT ON THE
ISSUE OF PERSONAL
JURISDICTION**

I, Michael Robertson, hereby declare:

1. I am the Chief Executive Officer of MP3tunes, Inc. (“MP3tunes”), one of the defendants in this action. I respectfully submit this declaration in support of Michael Robertson’s Motion for Summary Judgment on the Issue of Personal Jurisdiction.

2. Although I hold the position of Chief Executive Officer at MP3tunes, I have never received a salary or bonus from MP3tunes. Nor have I ever received any dividends or other financial benefits from MP3tunes. I am not a shareholder of MP3tunes, nor have I ever been one. I did own a membership interest in MP3tunes’ corporate predecessor, MP3tunes, LLC. However, I have not been a shareholder in MP3tunes, LLC since March 16, 2006. On January 25, 2008, MP3tunes, LLC was converted to a corporation and changed its name to MP3tunes, Inc.

3. MP3tunes is a Delaware corporation, with its sole place of business at 5960 Cornerstone Court West, Suite 100, San Diego California 92121.

4. As Chief Executive Officer, my responsibilities at MP3tunes are to develop and implement high-level strategies, to make major corporate decisions and to manage the overall operations and resources of the company.

5. All the songs stored at MP3tunes.com are directed by users. Neither I, nor MP3tunes, control which songs users choose to store or play at MP3tunes.com. Similarly, Sideload.com is a user-directed website that allows users to search for free songs on the Internet. Users of Sideload.com conduct searches by entering the name of a song or an artist. Sideload.com then searches for links to songs available on third-party Internet websites. This process is fully automated and, at no point, do I decide which song a user should search for at Sideload.com or store at MP3tunes.com.

6. Moreover, neither Sideload.com, nor MP3tunes.com enables users to make works publicly available by uploading materials to the Internet, only to sideload materials to their own private, password-protected storage lockers.

7. Neither I, nor MP3tunes, benefits from any infringements which may be committed by MP3tunes' users. MP3tunes provides storage lockers with two gigabytes of storage free of charge. This two-gigabyte storage limit for free accounts applies only to files that are uploaded from users' local hard drives. Users who seek to upload more than two gigabytes may upgrade to premium accounts, which cost up to \$12.95 per month. Sideload.com search services are free of charge and files that are sideloaded from the Internet to storage lockers do not count towards this two-gigabyte storage limit.

8. I have been a resident of San Diego, California since 1985. I do not own any property, rent property or maintain any bank accounts in New York. I do not have a phone listing in New York.

9. I do not transact, nor have I ever transacted, business on behalf of myself, or on behalf of MP3tunes, in New York, either personally or through an agent. I do not derive any personal income from any business or source located in New York. I have never paid any income or real estate taxes to New York.

10. Any works that I sideloaded were for my own personal use. None of these activities were directed or targeted at New York consumers.

11. I have not placed or sold goods or services in the stream of interstate or international commerce in my personal capacity. Nor have I derived any revenue from personally selling goods or services in interstate or international commerce.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 2, 2012
San Diego, California

By: _____
Michael Robertson

DM1\3195354.2